

REMARKS

Claims 1 – 40 have been examined. Claims 1 – 4, 8 – 10, 13, 14, 16 – 27, and 31 – 40 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Pat. Publ. No. 2002/0016740 (“Ogasawara”); and Claims 5 – 7, 11, 12, 15, and 28 – 30 stand rejected under 35 U.S.C. §103(a) as unpatentable over Ogasawara in view of U.S. Pat. Publ. No. 2003/0018522 (Denimarck).

The claims have been amended in two principal respects. First, amendments have been made to independent Claims 1, 31, and 36 to clarify that a record is made of which customers execute a transaction with the first entity and a record is made of which customers do not execute a transaction with the first entity. This incorporates the limitation of Claim 2, which previously included a typographical error that has been corrected. Second, amendments have been made to Claims 19, 21, 29, 33, and 38 to clarify that the customer conversion efficiency comprises a ratio of a number of customers who visit the first entity and execute a transaction with the first entity to a total number of customers who visit the first entity.

Ogasawara is directed to an electronic shopping system that provides a mechanism for providing staff in a shop with information about customers who visit the shop. When a customer enters the shop, (s)he presents a card with identification information and a visual image of the customer is taken. The identification information is used to retrieve related information about the customer, which is presented together with the visual image, to sales staff, thereby enabling the sales staff to provide more personal attention to the customer. *See, e.g.,* Ogasawara, ¶¶14, 15, 29, 30, and 63. After providing such information, updated transaction information may be collected and stored if the customer executes a transaction. Ogasawara, ¶ 36.

Notably, however, there is no teaching or suggestion in Ogasawara of “recording which of such customers do not execute a transaction with the first entity” (emphasis added). As explained in the application, this information is recorded in accordance with embodiments of the invention to allow an improved customer profile to be developed. For example, a customer

conversion efficiency may be calculated as the ratio of the number of transactions executed to the number of independent identifications made, thereby giving an indication of what fraction of visits by customers result in transactions. *See Application, p. 12, l. 32 – p. 13, l. 9.* Since there is no record kept in Ogasawara of which customers are identified as having physically visited the first entity, but do not execute a transaction with the first entity, there is insufficient data available to calculate such a customer conversion efficiency.

Instead, Ogasawara teaches explicitly that records of customer visits that do not result in transactions are *not* to be kept:

When a customer carrying a valid customer ID card leaves the establishment, the system according to the invention senses their exit, interrogates the ID card, receives the customer identification number and causes the in-store terminals to delete that customer's record from temporary storage. Thus, only records of customers, carrying a valid customer ID card, that are actually in the establishment, are maintained in temporary storage on each of the in-store terminals.

(Ogasawara, ¶19, emphasis added).

Such a teaching away has long been recognized as suggesting the *nonobviousness* of an invention. This difference between Ogasawara's teachings and what is claimed is a result of the fact that Ogasawara is concerned with allowing improved customer interaction with sales staff, not with developing a customer profile that may quantify customer visits that do not result in transactions.

The Office Action cites a number of portions of Ogasawara as disclosing certain claim limitations, but Applicants respectfully disagree that the relevant limitations are disclosed in the cited portions. For example, in connection with Claim 2, the Office Action cites ¶¶ 13, 14, and 18 a disclosing “recording which of such customers do not execute a transaction with the first entity” (Office Action, p. 4). But these sections merely describe how a customer identification number is used on an instrument in combination with an image of the customer to identify the customer. Paragraph 18 does teach the use of historical images in identifying the customer, but has no indication when those historical images were collected. The fact that those historical images are discussed in parallel with “the customer's transactional history” suggests

that they were collected when transactions were executed, not that a record was made of which customers *do not* execute a transaction.

Similarly, in connection with Claim 20, the Office Action cites ¶¶ 13, 14, 36, 38, and 63 as disclosing the determination of customer efficiency that comprises a ratio of a number of customers who visit the first entity and execute a transaction with the first entity to a total number of customers who visit the first entity. But these sections focus on an embodiment in Ogasawara that uses a card, such as a smart card, to allow the customer to interface with the store and to record a duplicate of the customer's transaction history. Paragraph 63 merely discusses how the interaction between sales staff and customers may be improved by using the stored personal information. Nothing in the cited sections discloses or suggests determination of a customer conversion efficiency like that defined in the claims.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


Patrick M. Boucher
Reg. No. 44,037

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
PMB:pmb
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